

COVID-19 Response in Africa: Together for Reliable Information



Figure 1: South African National Defense Forces soldiers and SAPS officers patrolling and enforcing COVID-19 regulations in Soweto, Gauteng in June 2020. (Photo: Getty Images)

South Africa: Briefing on attacks against journalists

March 2020–July 2021

At a glance

Global Expression
Report 2021 score:

71/100

1

journalist arrested

2

journalists threatened/
verbally attacked

1

Act amended

About this briefing¹

Journalists play a vital role in ensuring the right to freedom of expression and access to information, which is protected by South Africa's Constitution. The protection of media freedom becomes even more relevant during a pandemic.

However, changes made to law, policy, and regulations in South Africa during the first year of COVID-19 violated these fundamental rights, putting both freedom of expression and journalists' safety at grave risk, as this briefing shows.

We urge the Government of South Africa to follow the recommendations in this briefing to ensure the right to freedom of expression and the safety of journalists are guaranteed – especially in the COVID-19 pandemic.

¹ The evidence presented in this briefing was sourced from media houses, media watchdogs, journalists' unions, and legal analysis between March 2020 and July 2021. It is limited to human rights violations against journalists in the context of COVID-19 during that time (rather than non-pandemic-related violations against journalists, or violations against non-journalists during COVID-19). For our methodology, see www.article19.org/covid-19-response-in-africa/.



Figure 2: Paul Nthoba, Editor of Mahokare News. (Photo: Committee to Protect Journalists)

Physical attacks, threats, arbitrary arrests, and detention of journalists

The protection of journalists and human rights defenders, and ending impunity for attacks against them, is a global priority for safeguarding freedom of expression. Threats, attacks, arbitrary arrests, and detention, and, in the gravest cases, enforced disappearance or killings, constitute not only a violation of the right to freedom of expression but also a violation of the right to life and bodily integrity, and sometimes the right to health. Physical attacks are those that inflict pain, harm, or injury, including death, against a person.

An arbitrary arrest or detention is one carried out, among other things, when it is clearly impossible to invoke any legal basis justifying the arrest, without due regard to international fair-trial standards, or in response to the legitimate exercise of human rights – including the right to freedom of expression. They are violations of the right to liberty and/or a fair trial.

Police officers assault and detain Editor of Mahokare News in Meqheleng

On 15 May 2020, police arrested Paul Nthoba, Editor of *Mahokare News*, after he went to a police station to report police officers assaulting him earlier in the day. Members of the South African Police Services (SAPS) allegedly kicked and punched Nthoba while he was working on a story about the police enforcing lockdown in local communities. According to Nthoba, the police started beating him up when they saw him taking pictures of them. The police were monitoring citizens' adherence to COVID-19 lockdown rules and

regulations in the township of Meqheleng, close to the Lesotho border. Nthoba stated that the same police officers found him at the police station where he reported the assault, and further beat him.

Police detained Nthoba at the station for several hours, releasing him after asking him to sign a statement stating he had provoked police officers in the street and taken a photo without their permission. After media reports of the incident, the Independent Police Investigative Directorate (IPID) released a statement saying they were looking into the alleged assault. After an initial meeting with Nthoba, the IPID apparently did not speak to him further

because they could not locate him. It was later reported that Nthoba had fled to Lesotho, and that he had told Reporters Without Borders: "they promised to deal with me once I'm released."

Nthoba finally returned to South Africa on 29 June 2020, following mediation by a human rights organisation (the Transformation Resource Centre) and assurances by the South African President Cyril Ramaphosa that he would be safe. The IPID is investigating the case (reference number 402/05/2020). No further information had been issued at the time of writing (September 2021).

Threats and verbal attacks against journalists

These include threats of bodily harm (including death); may be direct, via third-parties, electronic, or physical communications; may be implicit or explicit; and may encompass references to killing or causing harm to a journalist's friends, family, or sources.

Leave now “or you will die here today,” police threaten journalist in Cape Town

On 9 April 2020, police officers allegedly swore at and threatened to kill freelance journalist Jacques Marais. Marais, who was covering a lockdown story, was following a convoy of a dozen police vehicles and an army Casspir (four-wheel drive) vehicle in a Cape Town township when one of the police vehicles stopped in front of him, blocking his way. According to his report to the South African National Editors' Forum (SANEF) and the South African Freelancers' Association, Marais said he then parked, got out of his car, and started photographing police officers beating up a civilian. Marais went on to say that while he was taking these photographs, two men who were part of the police convoy confronted him, brandishing 1.2-metre-long wooden clubs. On showing them his media accreditation card, Marais states that they hurled it back at him and one of the policemen told him to “leave, or you will die here today.” Marais left the scene and reported the incident to SANEF.

“My vehicle door slammed into my back. I turned around and two men in plain clothes, clearly visible in my photos as part of the police operation, then started shouting and brandishing 1.2m-long wooden clubs. Both men's faces were covered in buffs and I was cursed and threatened for the next couple of minutes.”

Jacques Marais, freelance journalist ([told to SANEF](#)).

Responses to ‘disinformation’ and ‘misinformation’

Under international human rights standards, freedom of expression and information cannot be suppressed purely because information is considered false, non-objective, or even deeply offensive. As the UN Special Rapporteur and other monitors for freedom of expression and access to information pointed out at the start of the pandemic, criminalising ‘false information’ related to COVID-19 may merely ‘create distrust in institutional information, delay access to reliable information and have a chilling effect on freedom of expression’.

Police forcibly remove journalists from court for doing their jobs

On 7 April 2020, police prevented journalists in Cape Town from entering the courts to report on the case of Stephen Birch, who was arrested for posting a disinformation video about contaminated COVID-19 test kits. Despite the [provisions of the International Covenant on Civil and Political Rights \(ICCPR\)](#) – that the press may only be excluded from a public hearing on legitimate grounds, when strictly necessary, and in special circumstances where publicity would prejudice the interests of justice – [the police physically removed journalists who were there to cover the proceedings, and gave them no reasons for their forcible removal.](#)

Broadcasters fined for interviewee's unpopular opinion

On 2 November 2020, the Broadcasting Complaints Commission of South Africa fined two broadcasters R10,000 (about USD660) for an interview relating to COVID-19 on 22 and 23 July 2020. Media Monitoring Africa lodged a complaint against the broadcasters eNCA and etv for broadcasting an interview with David Icke, a known conspiracy theorist, whose view was that the pandemic is a hoax and that ["there is no virus."](#)

Regional and international human-rights bodies [argue](#) that prohibiting 'false news' or 'non-objective information' is incompatible with international standards for restrictions on freedom of expression. Despite this, the tribunal [found](#) that comments made in the interview were neither justifiable nor reasonable, because the misinformation David Icke spread could cause harm to the people of South Africa. This finding runs counter to the advice of international bodies that, rather than prohibit misinformation and/or disinformation, states should seek to counter both, based on ["full, honest and evolving communication with the public, the promotion and protection of an independent press, and the careful and public correction of misinformation that could lead to public health harm"](#).

While limiting maliciously disseminated information can serve a legitimate purpose of protecting public health, such limitations must meet the three-part test of legality, legitimacy, and necessity, and must be proportional – even in a pandemic. These tests do not appear to have been met here in relation to the actions of the South African authorities.

Problems with pandemic-related legislation

On 15 March 2020, the Government of South Africa invoked the [Disaster Management Act](#), effectively declaring a national state of disaster. On 18 March 2020, the government issued an amendment to the Act, which criminalised:

- **making false claims relating to one's own or another person's COVID-19 infection status (Section 11(4)); and**
- **publishing false information relating to COVID-19 (Section 11(5)).**

These regulations are a problem for two reasons:

1. They fail to comply with international freedom of expression standards and are open to abuse

By introducing these regulations, South Africa joined a dangerous trend of countries using the COVID-19 pandemic to enforce troubling 'false information' legislation. In a [legal analysis](#), ARTICLE 19 showed that these provisions are extremely problematic and fail to comply with international freedom of expression standards – particularly Article 19(3) of the [ICCPR](#), under which any legislation restricting the right to freedom of expression must meet the three-part test of legality, necessity, and proportionality – even in a pandemic. These tests do not appear to have been met in relation to the actions of the South African authorities against journalists, nor in respect of the regulations introduced. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has also expressed concern that the vague and overly broad nature of these laws allows governments to misapply them against journalists, political opponents, and human-rights defenders.

2. They restrict the work of journalists – which restricts access to information for the public

South Africa's COVID-19 regulations also restrict the work of journalists. When the country is in level-5 lockdown, only media workers who can produce the following are classed as 'essential':

- **For local journalists:** an identity document, a press card, and a permit.
- **For foreign journalists:** a passport, a permit, and a confirmation letter from the employer.
- **For freelance journalists:** an identity document, a permit, and a letter from a media house confirming the journalist is working on its projects.

These restrictions were bound to be problematic – especially for freelance journalists, who sometimes work on non-commissioned stories first, and only then try to sell their stories to media houses. Under the regulations, in a hard lockdown, freelance journalists may only be allowed to work on commissioned stories.

Freedom of expression: a fundamental – but not absolute – right

Everyone has the right to express themselves freely – orally, in writing, and online. The right to freedom of expression includes the right to access information, which is particularly important in a pandemic. It is guaranteed under the ICCPR and in the South African Constitution.

While the right to freedom of expression is fundamental, it is not absolute. Under section 16(2) of the constitution, the right to freedom of expression does not extend to advancing the interests of propaganda for war, nor to inciting imminent violence, advocacy of hatred, or causing harm based on race, ethnicity, gender, or religion. Under Article 36, it may be limited – but only by a law, and only where such limitation is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'.



Figure 3: Police Minister Bheki Cele, Gauteng Provincial Commissioner Lt General Mawela, and SAPS officers patrolling in Krugersdorp in the presence of the media in May 2020. (Photo: SAPS)

Recommendations

ARTICLE 19 calls on the South African Government to:

- **Abolish the regulations relating to the criminalisation of misinformation** and ensure that all COVID-19-related legislation meets international freedom of expression standards.
- **Apply the test of legality, necessity, and proportionality** before limiting freedom of expression in cases of public-health threats.
- **Carry out investigations into all reports of human-rights violations** perpetrated against journalists and ensure that all perpetrators – including law-enforcement officers – are brought to justice in a trial meeting international fair trial standards.
- **Remind all law-enforcement and army personnel** of their duty to protect communities and allow the media to play their critical role of informing the public.
- **In collaboration with media organisations**, ensure, wherever possible, trauma counselling for journalists who need it.
- **Adopt the recommendations of the [resolution on the safety of journalists](#)**, adopted by the UN Human Rights Council on 6 October 2020.

